In the High Court of Punjab and Haryana at Chandigarh.

RSA No.2589 of 1984
Date of decision: 01.08.2007.

Natha Singh ....Appellant.

Versus

Bant Singh and others. ...Respondents.

CORAM
HON'BLE MR. JUSTICE PERMOD KOHLI

Present: Mr.KS Cheema,Advocate, for the appellant.

Mr.Jag Mohan Chaudhary, Senior Advocate, with
Mr.ABS Sidhu, Advocate,for the respondents.

PERMOD KOHLI, J. (ORAL):

I have heard the learned counsel for the parties at length and perused the record of the case.

I am of the opinion that following substantial question of law is involved in the present appeal:-

Whether the suit land is subject matter of sale under sale deed dated 14.01.1956 based upon stipulation contained therein regarding the description of the property?

The learned counsel for the parties have addressed their arguments on the above substantial question of law.

This Regular Second Appeal has been preferred by the plaintiff who succeeded in the suit filed by him in the Court of learned Sub Judge Ist

Class, Samrala, which was decreed vide judgment and decree dated 24.12.1981,but remained un-successful in the appeal preferred by the defendant-respondents in the Court of learned Additional District Judge, Ludhiana, who set aside the judgment and decree of the learned trial Court and dismissed the suit vide his judgment and decree dated 28.05.1984.

The plaintiff-appellant filed a suit for possession of 10 Marlas of land comprised in Khasra No.88 on the basis of a sale deed. Defendant No.1 who was the successor of the vendor pleaded in the written statement that he is owner of the suit property by way of adverse possession. It was further pleaded that the property in dispute was owned by Anokh Singh, his father who has sold the land comprised in Khasra No.275 to Natha Singh vide sale deed dated 14.1.1956 and during Kill-bandi khasra in lieu of Khasra No.267, Khasra No.88 was allotted and in lieu of Khasra No.275, Khasra No.88 was allotted .

On the pleadings of the parties, the learned trial Court framed as many as five issues. Under Issue No.1, it was required to be proved by the plaintiff that he is owner of the disputed property, whereas under Issues No.3 and 4 the defendants were required to prove their ownership by virtue of adverse possession. These issues were taken up by the learned Trial Court and after discussion of the evidence on record and also interpreting the documents particularly the sale deed and demarcation report, the learned trial Court held that the plaintiff is owner in possession of the property in dispute. The learned trial Court also observed that the plaintiff was forcibly dispossessed from the suit property and accordingly decreed the suit for possession. The learned trial Court also dis-agreed with the claim of the defendants of adverse possession over the suit property.

One of the defendants i.e. Bant Singh filed appeal against the judgment and decree of the learned trial Court. The learned Lower Appellate Court while interpreting the sale deed in favour of the plaintiff held that the sale deed relate to sale of only 10 ft. wide passage out of khasra No.267 wherein the right of passage was given not only to the vendees only but other persons also. On the basis of the aforesaid interpretation , the learned Lower Appellate Court set aside the judgment and decree of the learned Trial Court and dismissed the suit. Aggrieved of this, the plaintiff-appellant has filed the present Regular Second Appeal.

It has been very fairly agreed by both the learned counsel for the parties that the only issue relate to the interpretation of the sale deed dated 14.1.1956. Though the original sale deed is not on record, however, a certified true copy of the same was placed on record before the learned trial Court. It is relevant to mention the relevant stipulation in the sale deed which needs to be considered and interpreted “now I the vendor out of the aforementioned land has sold land measuring one biswa 3 biswasis and one passage towards east adjoining Kahan Singh, Jawala Singh and Sunder Singh, 10 ft. wide which will remain common between the vendor and the vendees”.

It has been argued by the learned counsel for the respondents that by virtue of the aforesaid sale deed only 10 ft. wide passage has been sold and no other land was ever sold to the plaintiff-appellant. According to him, the passage was also to remain common between the parties and hence the learned Lower Appellate Court has rightly interpreted the document and set aside the judgment and decree of the learned trial Court.

From the reading of the document, particularly the relevant

stipulation therein, it is abundantly clear that the intention of the parties was to sell the land measuring one biswa and three biswasis along with right of passage 10 ft. wide which was to remain common between the parties. If the intention was to sell only passage then the proper measurement of the passage would have been given in the sale deed itself. Mere fact that only the width of the passage is given, it further clarifies that intention was only to allow the parties to use 10 ft. wide passage. The length of the passage has not been given and without the length of the passage, land sold could not be measured. From the interpretation of the stipulation of the sale deed, I have no hesitation in arriving at a conclusion that the judgment and decree of the learned Lower Appellate Court is based upon total mis-interpretation and mis-understanding of the document i.e. sale deed. No other interpretation of the said document is possible.

In view of the above, I allow this appeal and set aside the judgment and decree dated 28.05.1984 of the learned Lower Appellate Court and restore that of the trial Court dated 24.12.1981. The parties to bear their own costs.

(Permod Kohli)
Judge

August 01, 2007.
BLS

Note: Refer to Reporter: YES